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PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT
(PCT Article 36 and Rule 70)

REC'D 11 OCT 2004

WIPO PCT

Applicant's or agent's file reference 11401		FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA416)	
International application No. PCT/AT 03/00130	International filing date (day/month/year) 04.03.2003	Priority date (day/month/year) 02.07.2002	
International Patent Classification (IPC) or both national classification and IPC A43B7/08			
Applicant SIPORT S.P.A. et al.			
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p><input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of 11 sheets.</p> <p style="text-align: right;">EPO - DG 1</p>			
03.12.2004			
<p>3. This report contains indications relating to the following items:</p> <p style="text-align: right;">(107)</p> <p>I <input checked="" type="checkbox"/> Basis of the opinion</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p>IV <input type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p>			
Date of submission of the demand 06.11.2003		Date of completion of this report 07.10.2004	
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Vesin, S Telephone No. +49-89 2399-7489 	

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. **PCT/IT 03/00130**

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17))*):

Description, Pages

1-9 received on 30.10.2003 with letter of 27.10.2003

Claims, Numbers

3-9 received on 30.10.2003 with letter of 27.10.2003

1-2 received on 25.09.2004 with letter of 21.09.2004

Drawings, Sheets

1/3-3/3 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-9
	No: Claims	
Inventive step (IS)	Yes: Claims	1-9
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-9
	No: Claims	

2. Citations and explanations

see separate sheet

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Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Reference is made to the following documents:

D1: WO 97/28711 A
D2: US 2002/017036 A1
D3: DE 299 11 499 U
D4: US-A-5 983 524

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of independent claim 1 does not involve an inventive step in the sense of Article 33(3) PCT.

The document **D1** is regarded as being the closest prior art to the subject-matter of claim 1, and discloses all the components of the claimed item of footwear, i.e. an outsole 2,3; a grating-like element 4b; a sheet insert 1; an insole 10 and an upper 9 (see figures 1, 3, 6; page 6, lines 1-33 and p.7, lines 19-38).

The outsole 2,3 of **D1** consists also of "*a monolithic piece*" (see figures 1, 3) "*of synthetic material*" (see page 6, lines 16-17).

The subject-matter of claim 1 therefore only differs from this known item of footwear in that:

- the pliable insert is made of water-repellent leather,
- the insole is made of water repellent leather, leather board or fibreboard,
- the upper is made of a water repellent leather or a combination thereof with synthetic materials.

The problem to be solved by the present invention may therefore be regarded as providing an alternative material with good breathability and moisture expelling properties.

The choice of a leather material in claim 1 for insert, insole and upper cannot be considered as involving an inventive step (Article 33(3) PCT) since leather has been the oldest ever known breathable material used in footwear (see **D4**, col.2, lines 58-63). Therefore, replacing the moisture permeable microporous plastics structure 1 of **D1** with its water repellent membrane 8 by a water repellent leather as well as replacing

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upper and insole with their water repellent membrane 8 (see page 7, lines 37-38) is one of several straightforward possibilities the skilled person would choose to face the technical problem posed, without thereby performing an inventive step.

Dependent claims 2-9 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step, see documents **D2** (grating-like element 11,12,13), **D3** (insock) and the corresponding passages cited in the search report.

AMENDED CLAIMS

[Received by the International Bureau on 27 OCT 2003 (27.10.03) ;
original claim 1, amended ; original claims 2, 3 and 6 to 11, unchanged ;
original claims 4, 5 and 12, cancelled]

1. An item of footwear (10) comprising in combination:

- an outsole (11) ^{consisting in a monolithic piece of synthetic material and} having in its forepart at least a vent opening (12)

5 which is made through the thickness of said outsole (11),

- a grating-like element (13) which is set into said vent opening (12)
and acts as a screen by separating and protecting the inside of the
footwear from the ground which comes into contact with said
outsole (11),

10 - a pliable sheet insert (15) made from a breathable and water-
repellent leather material which is embedded into the outsole (11)
and is positioned inside the outsole (11) so as to overlie said vent
opening (12),

15 - an insole (16) made of a breathable and water-repellent leather,
leatherboard or fibreboard material, and

- an upper (17) made of a breathable and water-repellent leather
material or a combination thereof with synthetic materials such as
foam polymers and nylon or polyester mesh bonded together in a
laminated form.

20 2. An item of footwear according to claim 1, wherein said grating-like
element (13) is formed of juxtaposed straight or curved, parallel or latticed
bar elements (14) which are integral with the outsole (11) and are produced
together therewith.